

Land Board Agenda Item
April 17, 2006

Requesting Authorization for §77-2-351, MCA, Transfer of Land to Jefferson County

Proposal: The Dept of Corrections (DOC), requests final approval from the Land Board for DOC to transfer a 7-acre parcel of land located south of Boulder to Jefferson County (County) under the provisions of §77-2-351, MCA (see attached map). DOC proposes to transfer fee title of the land to the County to be leased to a non-profit corporation for the construction of a Methamphetamine Treatment Center. The Land Board granted preliminary approval of this transfer on December 19, 2005.

History: DOC administers this parcel as a result of the reorganization of the Dept. of Institutions into DOC and the Dept. of Public Health & Human Services. Executive Order No. 13-00 issued on May 26, 2000 gives the Dept of Corrections administrative authority over this land. The parcel has been leased to an adjacent landowner for grazing purposes over 20 years resulting in minimal revenue to the state.

Legislative Council's concerns: Greg Petesch, Legislative Attorney, asked questions regarding this transfer and DNRC's responses are as follows:

(1) Question: Does a 2001 executive order, which granted the Department of Corrections jurisdiction over the property, conflict with 2-15-132, MCA?

Response: The above described lands are sovereign lands, and as such, their transfer via Section 77-2-351, MCA, is not inhibited by a prior May 26, 2000 Executive Order, which assigned administrative responsibility for these lands to the Department of Corrections.

(2) Question: Is the statutory authority for the proposed transfer more appropriately obtained under 77-2-302, MCA, which pertains to the disposition of former institutions, rather than 77-2-351?

Response: The above-described lands are eligible for transfer under Section 77-2-351, MCA, because the deed by which they were acquired evidenced that they are not held in trust or dedicated to the exclusive use of the former Department of Institutions. Lands that fall within the meaning of Section 77-2-302, MCA, are not restricted from transfer via 77-2-351, MCA, because Section 77-2-302, MCA, is permissive in nature.

(3) Question: Is the property covered by a mortgage resulting from legislation enacted in 1991?

Response: Review of the mortgage confirms that the above-described property is not encumbered under Section 90-7-220 (2), MCA.

Public Involvement: A public notice giving details of the transfer was placed in all three Jefferson County newspapers allowing 60 days for public comment; and a public notice was also sent to the Clerk & Recorder for posting in the Jefferson County Courthouse. Comments pertained to the future use of the property, not to the transfer of the property to the County.

Benefit to the State: DOC has no future plan for the property. The State receives minimal revenue from the property as part of an Ag & Grazing Lease agreement with an adjacent landowner. The treatment center would be a benefit to the community of Boulder by creating more jobs; and to the residents of Montana, giving treatment options for those offenders who require a more intense treatment program.

Recommendation:

The Director recommends final approval of the §77-2-351 transfer of approximately 7 acres from DOC to Jefferson County.